

REMARKS/ARGUMENTS

Claims 1-41 are pending in the present application, with claims 16-29 and 37-41 having been withdrawn from consideration. Claims 1 and 30 have been amended. Claims 1 and 30 are independent claims. The Examiner is respectfully requested to reconsider the rejections in view of the Amendments and the following Remarks.

Allowable Subject Matter

It is gratefully acknowledged that the Examiner considers the subject matter of claims 3-8, 14, 15, 32, 35, and 36 as being allowable if rewritten in independent form.

Drawings

It is gratefully acknowledged that the Examiner has approved the Formal Drawings submitted by Applicant, including the corrected drawings filed on February 23, 2005. The drawings comply with the requirements of the USPTO. No further action is necessary.

Rejection Under 35 U.S.C. § 102

Claims 1, 2, 9, 11-13, 30, 31, 33, and 34 stand rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,606,117 to Windle (hereafter Windle). This rejection, insofar as it pertains to the presently pending claims, is respectfully traversed.

As amended, independent claims 1 and 30 recite automatically outputting a timing signal when the subject itself satisfies the predetermined photographing condition. It is respectfully submitted that Windle fails to disclose these features.

Windle discloses a digital camera 202 that allows a user to select a template (col. 6, lines 4-6). Windle's camera includes a liquid crystal display (LCD) 203 providing the user a live view of the subject to be photographed (col. 6, lines 3-4). Windle further discloses that the camera displays a positioning indicator 401 on the LCD (col. 6, lines 26-29; Fig. 4). According to Windle, the camera analyzes the chosen template and provides suggestions to the user regarding zooming and orienting the camera to help the user correctly align the subject with the template (col. 6, lines 20-25). For instance, Windle discloses that the positioning indicator includes various arrows, each of which flashes in order to guide the user to correctly align the

subject (col. 6, lines 49-67). When the user of Windle's camera correctly aligns the image, the arrows of the positioning indicator will cease flashing, thus suggesting that the user should activate the shutter button (col. 7, lines 33-43).

In page 3 of the Office Action, the Examiner asserts the following:

it is inherent that once the shutter button is pressed the timing signal generator will output a timing signal to capture the image and the user activates the shutter button once a person's head is aligned correctly according to the template.

Thus, the Examiner takes the position that Windle inherently outputs a timing signal in response to the user pressing the shutter button.

Assuming *arguendo* that the activation of Windle's shutter button does cause a timing signal to be output, Windle still requires **user activation** of this button in order to output the signal. Accordingly, this teaching in Windle fails to disclose **automatically** outputting a signal when a predetermined photographing condition is satisfied, as required by independent claims 1 and 30.

Furthermore, claims 1 and 30 require that the timing signal be output when the **subject itself** satisfies a predetermined photographing condition. Conversely, Windle's camera only determines whether the **photographer** has satisfied certain

conditions, i.e., whether the photographer has correctly zoomed and oriented the camera with respect to the subject. Windle is concerned with advising the user how to zoom and position the camera to improve the image composition by flashing the arrows on the position indicator. Windle is not concerned with determining whether the **subject itself** satisfies any predetermined condition.

Thus, Windle provides no teaching of outputting a signal when the subject satisfies a predetermined condition, as required by independent claims 1 and 30.

Applicant respectfully submits that claims 1 and 30 are allowable at least for the reasons set forth above. Accordingly, it is respectfully submitted that claims 2, 9, 11-13, 31, 33, and 34 are allowable at least by virtue of their dependency on claims 1 and 30.

Rejection Under 35 U.S.C. § 103

Claim 10 stands rejected under 35 USC § 103(a) as being unpatentable over Windle. This rejection is respectfully traversed.

In page 5 of the Office Action, the Examiner states that:

Official Notice is taken that using an illuminator to illuminate the subject based on the timing signal is a well-known process.

Applicant respectfully challenges the Examiner's taking of official notice and demand the Examiner to produce authority for this statement.

Furthermore, even assuming *arguendo* that the Examiner can produce such authority, Applicants respectfully submit that this taking of official notice fails to remedy the deficiencies of Windle set forth above in connection with independent claim 1. Accordingly, Applicant respectfully submits that claim 10 is allowable at least by virtue of its dependency on claim 1.

Finality of Office Action is Improper

In this Office Action, the Examiner has presented new grounds of rejection for claims 1, 2, 9-13, 30, 31, 33, and 34. Applicants respectfully submit that the new grounds of rejection were not necessitated by any claim amendment made by Applicants in the Reply of February 23, 2005. In fact, the Examiner admits the following:

Applicant's **arguments**...filed February 23, 2005, with respect to the rejection(s)of [sic] claim(s) 1 and 30 have been fully considered and **are persuasive. Therefore, the rejection has been withdrawn.** However, after further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference. (emphasis added)

Applicant further wishes to direct the Examiner's attention to MPEP § 706.07(a), which states:

Under present practice, second or any subsequent actions on the merits shall be final, **except** where the examiner introduces a **new ground of rejection** that is **neither necessitated by applicant's amendment nor based on information submitted in an information disclosure statement...**

Because the Examiner's new grounds of rejection were not necessitated by either of the conditions in MPEP § 706.07(a), Applicant respectfully submits that the finality of this Office Action is improper and should be withdrawn. Furthermore, Applicant requests that this Amendment should be entered and considered under a non-final case status.

Conclusion

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.

Should the Examiner believe that any outstanding matters remain in the present application, the Examiner is respectfully requested to contact Jason W. Rhodes (Reg. No. 47,305) at the telephone number of the undersigned to discuss the present application in order to expedite prosecution.

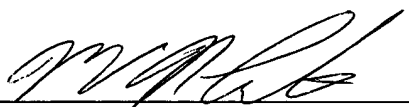
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

Dated: July 25, 2005

By


Michael R. Cammarata, #39,341

MRC/JWR

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000